No. 83-1559 (2)

In the Supreme Court of the United States

OCTOBER TERM, 1983

ROBERT M. AYRES, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

REX E. LEE
Solicitor General

STEPHEN S. TROTT
Assistant Attorney General

MERVYN HAMBURG
Attorney

Department of Justice
Washington, D.C. 20530
(202) 633-2217

QUESTIONS PRESENTED

1. Whether a comprehensive incriminating statement given by petitioner after he had repeatedly received *Miranda* warnings should have been suppressed because petitioner had previously made a brief inculpatory statement that the district court found inadmissible, when the courts below ruled that the second statement was not the causal product of the first.

2. Whether the statement should have been suppressed on the ground that there was no probable cause to arrest petitioner.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Page

Cases—Continued:

Constitution and statute:

In the Supreme Court of the United States

OCTOBER TERM, 1983

No. 83-1559

ROBERT M. AYRES, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 10a -22a) is reported at 725 F.2d 806.

JURISDICTION

The judgment of the court of appeals was entered on January 19, 1984. The petition for a writ of certiorari was filed on March 19, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

After a trial before a jury in the United States District Court for the District of Rhode Island, petitioner was convicted of conspiracy to possess 8,785 pounds of marijuana

with intent to distribute it, in violation of 21 U.S.C. 846.[1] He was sentenced to imprisonment for six years. The court of appeals affirmed (Pet. App. 10a-22a).

1. In July and August 1982, law enforcement authorities conducted surveillance of the sailing vessel *Fiesta,* off the shore of Rhode Island, because they had received information that it was involved in a marijuana smuggling operation. On August 9, the Coast Guard boarded the *Fiesta* and discovered 221 bales of marijuana weighing 8,785 pounds. While the boarding was in progress, officers on land who were participating in the investigation observed a truck towing a speedboat toward a beach. An officer subsequently saw the speedboat go out to sea. Pet. App. 12a-13a.

While the speedboat was heading away from shore, a Coast Guard ship illuminated the *Fiesta* to aid the boarding operation. Officers watching the speedboat saw that when the *Fiesta* was illuminated, the speedboat quickly turned back toward shore. It travelled at a high speed with its running lights extinguished. Pet. App. 13a. There were no other comparable boats in the area at that time (I C.A. App. 277).

An officer on land was apprised of both the speedboat's behavior and the discovery of marijuana on the *Fiesta.* He instructed other officers to proceed to the beach from which the speedboat had been launched. When the officers did so, they saw that the boat had already been lifted from the water and reattached to the truck and that the truck was departing. Petitioner was a passenger in the truck. The

---

[1]Petitioner and two co-defendants were charged in an eight-count indictment. Petitioner was named in four counts; he was acquitted on the other three charges. Co-defendants Termini and Ardizzone were each charged in six counts and convicted on four. Each was sentenced to a fine of $15,000 and to concurrent sentences of five, eight, eight, and one year's imprisonment. I C.A. App. 4, 7-8, 14-15.

officers blocked the truck's path, forcing it to stop. When they did so, the driver fled, but petitioner was apprehended, handcuffed and ordered to lie down. Officer Phelps, who was holding a rifle at the time, gave petitioner the warnings required by *Miranda* v. *Arizona,* 384 U.S. 436 (1966). Pet. App. 13a, 15a-16a; I C.A. App. 255, 343. Petitioner stated that he understood his rights (I C.A. App. 342).

Officer Phelps testified as follows about his ensuing conversation with petitioner (I C.A. App. 242):

> I said, where's the dope, and he said you're a day early, this was only a surveillance run. And I said who's the driver of the truck.
>
> * * * * *
>
> He told me that the name of the person was Freddie. I asked for the last name, and he told me that he didn't know the last name, that nobody used last names, and if they did, they would be phony names.

Another officer then transported petitioner to the stationhouse, giving him *Miranda* warnings en route. At the stationhouse, petitioner was placed in a holding cell and again given *Miranda* warnings. A federal law enforcement officer then questioned petitioner as follows (V C.A. App. 512-513):

> I told him to start from the beginning and tell me how he got involved in the smuggling operation. He stated that at a previous time he had worked for an individual named Robert Berzon in Florida, that he had done packaging and inventory work for him in a smuggling operation in south Florida. He stated that Berzon had moved the smuggling operation to New England because of law enforcement pressure in the south Florida area; that as far as this particular operation went,

> he had called a voice beeper and left a message. Following that, an individual named El got in touch with him, El told him to go to the Newport Creamery in Wakefield. [Petitioner] stated that he went to that location approximately three days before the arrest, he was met by an individual named Chipper, he stated Chipper took him to the house in Hope Valley on Woody Hill Road, and that while he was at that residence he worked on the power trim of the [speedboat]. He stated that he never left the house until the night of August 9th, and when he did leave he left with Fred Baker to meet the Fiesta. He also stated that all the goods that were in the boat as far as the provisions go were purchased by Chipper. He also stated that Robert Berzon lived in some luxury apartments on Boston harbor, the name of Harbor Towers was suggested to him and he stated that he thought that was where Berzon lived. He also stated that Berzon owned a Chevy blazer and that he had radio equipment inside the blazer, and that's how the smuggling operation was being controlled through that radio equipment in the blazer.

2. Petitioner moved to suppress his statements. The district court ruled that the officers' action in blocking the truck in which petitioner was a passenger was an arrest, not a stop, but that it was supported by probable cause and was therefore lawful. The district court accordingly concluded that petitioner's statements were not the fruit of a Fourth Amendment violation. Pet. App. 4a-5a.

The district court then ruled that petitioner's first statement, which he made to Officer Phelps on the beach, should be excluded from evidence; the court reasoned that although petitioner had received *Miranda* warnings, the circumstances of the questioning precluded "a knowing and voluntary waiver of his rights" (Pet. App. 6a).

But the district court rejected petitioner's contention that the statements he subsequently made at the stationhouse should also be suppressed. The court explained (Pet. App. 8a-9a):

> [Petitioner's] initial statement, "you are a day early. This is only a surveillance run[,]" is not equivalent to his later admission as to how he allegedly became involved in drug smuggling. * * * [T]his case did not involve the interrogation of the defendant by an agent, "a[r]med with the defendant's earlier admissions." [Citation omitted]. It might be argued that the factual information discovered during the interrogation of [petitioner], in the Charlestown Police Station was the fruit of the poisonous tree of the earlier unlawful interrogation because both conversations were related to an alleged drug smuggling operation. The court rejects this contention. It simply cannot be said that [petitioner's] subsequent statements about his possible involvement with drug smuggling activities were the tainted product of his initial admission.

The district court also rejected petitioner's contention that the events on the beach rendered invalid his subsequent waiver of his *Miranda* rights at the stationhouse. The court explained that at the time petitioner made his stationhouse confession, he had not been in custody for a long period and had not been subjected to prolonged interrogation. In addition, the court reasoned, petitioner had been moved to a different location, had received additional sets of *Miranda* warnings, and was questioned by a different officer. Pet. App. 7a-8a. The district court found that "[t]his broke the chain of events between his initial involuntary statement and his subsequent admissions in the police station" (*id.* at 8a). The district court instructed the jury to determine whether petitioner's subsequent statements were voluntary and to disregard them if they were not (see *id.* at 17a).

3. The court of appeals affirmed petitioner's conviction. The court did not reach the question whether the initial blocking of the truck was a stop or an arrest (see Pet. App. 15a n.3) because it found that the officers had probable cause (*id.* at 15a-16a). The court of appeals also upheld the district court's rejection of petitioner's contention that his stationhouse confession should be suppressed as the "fruit" of the statement he made on the beach. The court of appeals recognized that "[a] statement made after effective *Miranda* warnings are provided may not be admissible if it is the fruit of an inadmissible prior statement" (*id.* at 16a). But the court ruled (*id.* at 17a): "In this case, removing [petitioner] from the scene where he was originally questioned, giving him his *Miranda* warnings for the third time, and interrogating him by a different officer when he was relaxed, composed, and uncoerced could well have dissipated whatever taint may have infected his prior statements * * *. We fail to see that [petitioner's] statements at the police station were inadmissible as a matter of law; we perceive no error in their admission."

ARGUMENT

1. Petitioner contends that the statement he made at the stationhouse was inadmissible. Petitioner made that statement after he had repeatedly been given *Miranda* warnings and had made what appears to be a voluntary and intelligent waiver of his rights. There is no evidence that the officers who questioned petitioner at the stationhouse used intimidating or oppressive tactics.

Petitioner nevertheless contends (Pet. 6-7) that his stationhouse confession should have been suppressed because it was "tainted" (*id.* at 6) by his earlier statement at the arrest scene, a statement that the district court ruled was inadmissible. Petitioner may mean one of two things by this. He may mean that the circumstances present at the

arrest scene — circumstances that the district court considered too coercive to permit a valid waiver of *Miranda* rights[2] — persisted and rendered the stationhouse environment so coercive that the waiver of *Miranda* rights that petitioner gave at the stationhouse was invalid. This is what was found to have occurred in the cases petitioner cites (Pet. i, 6) — *Westover* v. *United States*, a case decided with *Miranda*, and *Clewis* v. *Texas*, 386 U.S. 707 (1967). Alternatively, petitioner may mean that while his stationhouse confession was itself voluntary and was preceded by a valid waiver of *Miranda* rights, it should have been suppressed because it was the "fruit" of his earlier inadmissible confession.[3]

However petitioner's contention is interpreted, it does not merit this Court's review.

a. Both courts below ruled that the conditions that were present at the first interrogation of petitioner did not persist and affect the stationhouse environment, and their ruling was clearly correct. The coercion that the district court perceived in the interrogation that occurred at the scene of the arrest resulted entirely from the fact that petitioner was handcuffed and lying face down and that the officer questioning him was holding a weapon. See Pet. App. 6a. All of

---

[2]Petitioner asserts (Pet.5) that the district court considered his first statement to have been compelled, but the reason the court gave for suppressing the statement (Pet.App. 6a) was only that it was obtained in circumstances that rendered petitioner's waiver of *Miranda* rights invalid. See generally *Garner* v. *United States*, 424 U.S. 648, 654 n.9 (1976).

[3]Justice Harlan distinguished between two somewhat analogous bases for urging the suppression of a statement in his separate opinion in *Darwin* v. *Connecticut*, 391 U.S. 346, 350-351 (1968). See also *New York* v. *Quarles*, No. 82-1213 (June 12, 1984), slip op. 1-2 & n.1 (O'Connor, J., concurring in part and dissenting in part); *McMann* v. *Richardson*, 397 U.S. 759, 769 (1970).

these conditions had been removed when petitioner was questioned at the stationhouse; whatever physical force or threat petitioner experienced at the arrest scene was wholly absent at the stationhouse.

Nor is there any evidence that petitioner had any reason to believe that these conditions would recur. The stationhouse interrogation appears to have been of relatively short duration and there is no suggestion that it was in any way menacing. Petitioner received *Miranda* warnings twice shortly before he was questioned at the stationhouse. There is, accordingly, no reason for this Court to question the lower courts' determination that Officer Phelps's actions at the arrest scene did not impair petitioner's ability to choose to remain silent at the stationhouse.[4]

b. The findings of the courts below also preclude the analytically distinct contention that petitioner's second incriminating statement, while itself voluntary and obtained in circumstances that comply with *Miranda*, should be suppressed because it was the "fruit" of his prior statement. Whatever the proper scope of a "fruits" doctrine in this area, it is entirely clear that petitioner's subsequent statement cannot be suppressed if it was not the causal product of his earlier statement. That is, petitioner cannot claim that his stationhouse confession is an inadmissible "fruit" unless he can show that it was "impelled by" or "induce[d]" by his prior statement (*Harrison* v. *United States*, 392 U.S. 219, 224-225 (1968)); petitioner's attempt to invoke a "fruits" doctrine must " 'begin with the [showing] that the

---

[4]In both *Clewis* and *Westover*, the defendants were subjected to prolonged custodial interrogation under coercive circumstances before they confessed. Nothing occurred before the confession in issue that dispelled the coercive pressures of the custodial surroundings. See 386 U.S. at 709-710; 384 U.S. at 494-496. Here, the circumstances that the district court considered coercive were removed before petitioner gave his confession at the stationhouse.

challenged evidence is *in some sense* the product of' " the statement that was found to be inadmissible. *Nix* v. *Williams,* No. 82-1651 (June 11, 1984), slip op. 11, quoting and adding emphasis to *United States* v. *Crews,* 445 U.S. 463, 471 (1980). See, *e.g., Kastigar* v. *United States,* 406 U.S. 441, 453-454 (1972); *Murphy* v. *Waterfront Commission,* 378 U.S. 52, 79 (1964).

The courts below concluded that petitioner failed to show that his second statement was the causal product of the first. See Pet. App. 8a-9a ("It simply cannot be said that [petitioner's] subsequent statements about his possible involvement with drug smuggling activities were the tainted product of his initial admission."); *id.* at 17a. There is no reason for this Court to reassess their resolution of this factual issue. Petitioner's first statement — "you are a day early[,] this is only a surveillance run" — was brief and offhand. Moreover, it was not literally a confession; it incriminated petitioner only indirectly, by confirming instead of denying the premise of Officer Phelps's question "where's the dope?" In addition, there is no evidence that the agents who questioned petitioner at the stationhouse reminded him of his earlier statement in an effort to convince him that he had nothing more to lose by speaking fully.

Thus, it is entirely possible that petitioner did not even recall his previous, brief statement when he was questioned at the stationhouse. Even if he did recall it, he may well not have realized that it was significantly incriminating; a nonlawyer will not always recognize the damaging use that can be made of such informal remarks. And even if petitioner realized that he had made a damaging statement, there is no evidence that his having made the previous statement affected his willingness to speak further; he may simply have been disposed to cooperate with the authorities

throughout.[5] In sum, there was ample basis for the lower courts' concurrent determination that petitioner's station-house confession was not the product of his earlier statement. Accordingly, petitioner cannot seek the suppression of his second statement on the ground that it was a "fruit" of the first.[6]

---

[5]Petitioner is incorrect in asserting (Pet. 7) that the decision below conflicts with decisions of other courts of appeals. In *United States* v. *Lee*, 699 F.2d 466, 468-469 (9th Cir. 1982), *Alberti* v. *Estelle*, 524 F.2d 1265, 1268 (5th Cir. 1975), and *Randall* v. *Estelle*, 492 F.2d 118, 120 (5th Cir. 1974), the courts found that the statements in issue were either the product of a prior, inadmissible statement or the product of the coercive circumstances that caused the prior statement to be suppressed. Here, of course, the findings of the courts below were to the contrary. In neither *Lee*, *Alberti*, nor *Randall* did the facts resemble those of this case. *Stumes* v. *Solem*, 671 F.2d 1150 (8th Cir. 1982), rev'd, No. 81-2149 (Feb. 29, 1984), and *United States* v. *Tucker*, 610 F.2d 1007 (2d Cir. 1979), did not involve any issue comparable to those presented here: *Stumes* concerned the contours of the prophylactic rule established by *Edwards* v. *Arizona*, 451 U.S. 477 (1981), and *Tucker* involved statements that were the alleged fruits of a Fourth Amendment violation.

[6]In *Oregon* v. *Elstad*, cert. granted, No. 83-773 (Mar. 5, 1984), this Court is considering the extent to which an otherwise admissible statement must be excluded as the fruit of a statement obtained in violation of *Miranda*. See also *Quarles*, slip op. 1-2 n.1, 6-14 (O'Connor, J., concurring in part and dissenting in part). (We have sent a copy of the Brief for the United States as Amicus Curiae in *Elstad* to counsel for petitioner.) But however the Court resolves the question presented in *Elstad*, this case will not merit review.

Even if the Court in *Elstad* adopts the position that *every* statement that is the product of a prior inadmissible statement must be suppressed (but see *United States* v. *Bayer*, 331 U.S. 532, 540-541 (1947)), petitioner would not be entitled to relief. That is because, as we explained in text, the courts below determined that petitioner failed to satisfy the threshold test for invoking any "fruits" doctrine; he has not shown a causal connection between the inadmissible evidence and the evidence he seeks to have excluded.

2. Petitioner further contends (Pet. 7-9) that the initial detention of the truck in which he was riding was not supported by probable cause. We believe, contrary to the district court, that the initial police action in blocking the truck was a stop that required only reasonable suspicion (see *Terry* v. *Ohio*, 392 U.S. 1 (1968)), at least up until the point when the driver fled, thus unquestionably giving the officers probable cause.[7] Furthermore, we doubt that petitioner would have been entitled to have his stationhouse confession suppressed even if the detention of the truck were illegal. See *Rawlings* v. *Kentucky*, 448 U.S. 98, 106-110 (1980).

But in any event, the courts below were plainly correct in concluding that the officers had probable cause when they first blocked the truck. Contrary to petitioner's assertion, their actions were not based solely on petitioner's "presence at the scene of a crime and/or association with criminals" (Pet. 8): the operators of the speedboat and the truck behaved in precisely the way that would be expected of persons engaged in assisting the marijuana smuggling operation that the officers knew was in progress. As the court of appeals explained (Pet. App. 15a-16a (footnote omitted)):

> At the time of [petitioner's] arrest, the state officers and federal agents operating together and in communication with each other, had observed the trailer and speedboat approach the breachway. Agents then saw the speedboat go toward the *Fiesta*, and upon its

---

[7]The district court relied on *United States* v. *Ceballos*, 654 F.2d 177 (2d Cir. 1981), in concluding that the initial blocking of the truck was an arrest instead of a stop (Pet. App. 3a-4a). While we do not agree with *Ceballos*, we note that this case is easily distinguishable. In this case, unlike *Ceballos*, the officers merely blocked the truck; there is no showing that they approached with guns drawn (see I C.A. App. 257). The driver fled "about simultaneously with" the blocking of the truck (*ibid.*).

illumination, turn about and speed for shore. They saw the speedboat as it proceeded rapidly along the shore without using its running lights. By the time they reached it at the breachway, it already had been removed from the water, loaded onto the truck, and the truck and its occupants were making a hurried departure. At this point, the officers knew that the *Fiesta* had a large quantity of marijuana aboard. Under such circumstances, the retreat of the speedboat from the marijuana-laden *Fiesta* and the obvious flight of its occupants with the truck, trailer, and speedboat were sufficient to warrant a prudent man in believing that the truck's occupants were involved in the smuggling operations.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

REX E. LEE
Solicitor General

STEPHEN S. TROTT
Assistant Attorney General

MERVYN HAMBURG
Attorney

JUNE 1984

DOJ-1984-06